

10

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 BENJAMIN G OWEN, individually and No C 05-3651 VRW
on behalf of other individuals
12 similarly situated. ORDER

13 Plaintiff,

11 of 11

16 || E*TRADE FINANCIAL CORP, et al.

Defendants.

20 Benjamin Owen, class representative in this putative
21 class action, has filed a notice of voluntary dismissal pursuant to
22 FRCP 41(a)(1). Doc #9.

23 Pursuant to FRCP 23(e)(1)(A), voluntary dismissal of a
24 class action requires the court's approval. Further, FRCP
25 23(e)(1)(C) provides that if voluntary dismissal of a class action
26 would bind absent class members or otherwise prejudice their
27 ability to pursue claims individually, the court may approve the
28 settlement "only after a hearing and on finding that" the voluntary

1 dismissal is "fair, reasonable, and adequate." To this end, FRCP
2 23(e)(2) provides that parties seeking approval of a voluntary
3 dismissal "must file a statement identifying any agreement made in
4 connection with the proposed" voluntary dismissal." If the
5 voluntary dismissal is made in connection with a settlement, class
6 members who would be bound by those terms must be provided with an
7 opportunity to object to the terms of that settlement. FRCP
8 23(e)(4)(A). And in any event, notice of the dismissal of this
9 action might be necessary to protect class members who are not
10 pursuing individual claims due to the pendency of this action.

11 Plaintiff's filing utterly fails to meet the requirements
12 or facilitate the procedural protections of FRCP 23(e). The court
13 reminds the parties that class members will not be bound by any
14 settlement the parties may have reached unless and until the court
15 has approved voluntary dismissal of this action.

16 Plaintiff is ORDERED to submit an application, not to
17 exceed twenty pages, supporting his request for the court's
18 approval of voluntary dismissal of this action on or before March
19 31, 2006. The application shall identify any agreement made in
20 connection with the proposed voluntary dismissal and explain why
21 the agreement, including any plan of allocation and award of fees
22 from a common fund generated by the settlement, is in the best
23 interests of the putative class. If no such agreement exists,

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1 plaintiff shall explain how potential prejudice to class members
2 who may have relied on the pendency of this action can be avoided,
3 through notice to the putative class or otherwise.

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5 SO ORDERED.

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8 VAUGHN R WALKER

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10 United States District Chief Judge

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